

(Charles R, page 210). Reading about Thailand made me wonder whether our sacrifice of duty-based morality in favour of making autonomy pre-eminent was too great. The Chinese philosophical approach, so utterly different from that of Western science, has tremendous appeal. I am by no means certain that it is good that younger Chinese practitioners are rejecting the teaching of their forefathers in favour of adopting Western methods for testing their medicines.

However, the views from non-Western cultures were given a respectful hearing. Moreover, the four principles of autonomy, beneficence, non-maleficence and justice are sufficiently broad to include other than Western perspectives. But the way the four principles will be used will depend entirely upon the value system of the user. For good or bad, the CIOMS guidelines have remained predominantly Western in their approach.

Reference

- (1) Foster C. International ethical guidelines for biomedical research involving human subjects [book review]. *Journal of medical ethics* 1994; 2: 123-124.

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Health care as human right

Edited by Anton van Niekerk, Unit for Bioethics, University of Stellenbosch, 1993, 115 pages, £5/US\$14, soft cover

The rights of patients in Europe

Henk Leenen, Sief Gevers and Geneviève Pinet, Copenhagen, Kluwer, on behalf of the Regional Office for Europe of the World Health Organisation, 1993, DFL97/US\$5, soft cover

There is a widespread tendency in international meetings and international commentaries to conceptualise health within the framework of international human rights law in positivistic terms. The right to health, or at least the right to decent health care, is widely believed to be an accepted principle. Reference is frequently

made to the definition of health in the preamble of the constitution of the World Health Organisation, which is, however, so utopian as to be virtually useless. The reality concerning interaction between health and human rights is more complex and less inspiring. There is no binding and enforceable principle of the right to health care in international human rights law. In the principle human rights instruments applicable at an international level, health is primarily a consideration which limits individual liberties and rights. The European Convention for Human Rights is of particular interest since individuals can make a complaint concerning violations to the European Commission and Court of Human Rights. Over the past 30 years, the court has made very limited contributions to human rights aspects of health, with the exception of guaranteeing procedural rights for psychiatric patients in involuntary hospitalisation and providing guarantees concerning adequate levels of health care for prisoners. This is not surprising, since the text of the convention refers to health firstly to justify 'the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts ...'. Furthermore, the right to respect for private and family life, the right to freedom of thought, conscience and religion, the right to the freedom of expression and the right to liberty of movement are all limited on the grounds of public security and the 'protection of health'.

Professor Jonathan Mann and his group at the Harvard School of Public Health have proposed a new link between health and human rights by claiming that promotion of human rights will necessarily lead to improvements in the health status of a population and that discrimination and non-respect of minority rights, lack of freedom of speech, etc will have negative effects on public health. In this sense, human rights are integrated into what Mann calls 'the new public health'.

The two books reviewed illustrate emerging differences in conceptualisation of health and human rights. Anton van Niekerk has put together a collection of essays linking human rights and health mainly in the setting of South Africa as the era of apartheid was coming to an end. The various authors address the issue of 'appropriate health care', thereby explicitly linking the concept of an individual's

needs to the available resources in a community. There is no doubt that the economic injustice, the forced population movements, the poverty in the so-called Bantu homelands and the violence generated by the apartheid policy are an example of the direct negative effects of human rights violations on health care. It remains to be seen whether the end of apartheid and the growth of democracy in South Africa will lead to tangible improvements in health status. Nevertheless this collection of essays could well be used to illustrate the theme of a new link between health and human rights as proposed by Mann.

The same cannot be said for the book by Leenen, Gevers and Pinet which is the fruit of a 'comparative and pragmatic study' in which data were collected in 1989 from 26 countries. The study was restricted to the field of individual patients' rights based on a concept of human self-determination. The study updates an earlier WHO study completed in 1983. In the intervening period there has been a growth in legislation protecting human subjects of research and a modernisation of laws on the commitment of mental patients to psychiatric institutions. However, the development of general laws on patient rights was found to be 'rather slow'. The detailed account of legislative provisions illustrates how difficult it is for an individual patient to understand his or her rights and to seek redress when these rights are not granted. Even on such simple issues as the right to be informed and the right of access to a patient's file, few countries have clear and easily understandable provisions. The overall impression is that European legislation is weighed down by a long history of administrative and civil law and the reluctance of courts to become involved in promoting human rights in the field of health in general. The courts become involved in certain highly restricted fields such as organ transplantation and assisted procreation. Nevertheless, it seems that neither legislatures nor the courts have taken a leading role in moving away from the paternalistic model of health care. Such moves have come more from the consumer movement and from health care providers themselves.

The WHO study will certainly be of interest to teachers of health law and to those involved in drafting legislation. However, the summaries are not detailed enough to provide a base for a scholarly study or detailed comparative legal studies. There is also little

information on judicial decisions in the various countries. The material from countries with a federal structure such as Switzerland, Germany and the United Kingdom hardly takes into account sub-national provisions (Cantons, Länder, etc), so that the legal measures appear incomplete.

Neither book discusses at any length the links and differences between legal provisions and principles of bioethics. The WHO study sees 'self regulation' of research and medical practice in the context of 'professional ethics'. There appears to be a tacit assumption that a legal model of rights protection is more functional than ethical debate and discourse. National legislation on bioethics and the efforts to draft an acceptable European convention on bioethics are further signs of attempts by legislatures and governments to control the debate on bioethics. The risk is that neither Mann's essentially humanistic and optimistic vision of health and human rights, nor pluralistic ethical debate will prevail. The future seems to lie in official regulatory procedures and ever more complex law-making.

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The ground of professional ethics

Daryl Koehn, London and New York, Routledge, 1994, 224+x pages, £11.99

Daryl Koehn is a philosopher at DePaul University, Chicago. Her aim in this tightly argued and most readable book is to re-think the source of the standards and norms that shape and inform professional-client relationships. She draws on examples from three different categories of professionals: doctors, lawyers and ministers of religion, and the illuminating way in which she uses her case material suggests that she has had occasion to reflect upon the responsibilities and limits of well-grounded professional action in each of these three categories from within her own life experience. She writes from an American perspective, of course, but this should not deter British readers who will find much to profit by, and several thought-provoking surprises, in following through her analysis.

The book's central proposition is well summarised in the title of Chapter 4: 'The public pledge as the ground of professional authority'. By 'the public pledge' she does not mean making a commitment in public, necessarily, but a pledge by the professional to help any member of the public to the best of his or her ability within a specified area of competence. Her emphasis on an undertaking to render assistance to a clientele distinguishes her position from that of W F May in *The Physician's Covenant* (1), in which he focuses on the doctor's pledge to an individual patient. It has important implications for the way in which the professional fulfils his pledge, one of which I will touch on in a moment.

However, there is rather more to a well-grounded professional ethic than a promise to serve a client group effectively. Koehn dismisses expertise as a tenable ground for such an ethic. In describing expert knowledge *per se* as 'inherently untrustworthy' in character (page 20) she is at pains to differentiate it from *scientia*, theoretical or scientific knowledge applied to the attainment of an object that is good in itself, as are healing, justice and salvation. 'Since the object the professional studies as part of perfecting his own life is the health of the patient or justice for the litigant, the client's good is the professional's object. This good is present "in" the knowledge' (page 21). An analogous argument disposes of a contractual relationship as sure ground, not because a contractual element – or a direct payment for a professional's services – is unethical, but because a contract may undermine the client's trust in the professional, and may induce a passivity in the client that renders the professional's services ineffective.

Professor Koehn's discussion of the nature and limits of confidentiality will be of particular interest to doctors, the more so, perhaps, in that she sheds some new light on the issue by using illustrative examples from the law and the priestly ministry. The *prima facie* duty of the professional to respect his client's confidence is argued strongly. But duty has its limits, on grounds which are not utilitarian or rights-based, for reasons cogently set out on pages 165–169, but which rest on the moral dynamic created when the client acts in such a way that she ceases to be a client. The author uses an imaginary example from the confessional to make the point. Suppose a penitent comes to the priest to seek forgiveness for having committed an act of

adultery, but in the course of the dialogue reveals that he has contracted a sexually transmitted disease as a result, notwithstanding which he proposes to continue normal sexual relations with his wife without telling her. Although the man genuinely repents his adultery, he shows no remorse over his intention to act in future in a way that may make his spouse ill. This part of his account cannot therefore be said to be a confession, and it would not, under a covenantal ethic, be a protected confidence. The priest has pledged himself to work for the good of a clientele, which in this instance clearly includes the man's wife, whether or not she shares his religious practice, and would therefore be justified in seeking to ensure that she knew about the disease, preferably by persuading her husband that he had a duty to tell her, but in the last resort by informing her directly. Doctors and others who have grappled with the problem of the limits to professional confidentiality, in the context of genetic screening for example, may find matter for reflection in this section of the book.

The centrality of trust and trustworthiness to a professional relationship underlies Koehn's approach to the grounding of professional ethics throughout. Trust must be mutual: a client's role is not a purely passive one, and his willingness to explore his true needs, as distinct from his desires, through dialogue, distinguishes such a relationship from a purely contractual one, where the 'professional's' task is to provide a specified item of service. The cultivation of trust is not a simple matter, not least because each encounter between professional and client is a meeting of two individuals with different backgrounds, different capabilities, and maybe different ideas about the limits of the possible. The author quotes an American legal scholar, writing in 1880: "Duty, not success, is the law of professions" (page 177). In a world where economic performance and customer satisfaction are assuming ever greater importance in the eyes of policy-makers on both sides of the Atlantic, Professor Koehn is right to be concerned about the way in which professional ethics are being undermined, perhaps unintentionally, but none the less damagingly for that. Her attempt to develop a theory that grounds the professional's authority in a coherent and practical way is essential reading for anyone who shares her anxieties.